

SENATE BILL REPORT

SB 5922

As of February 23, 2009

Title: An act relating to protecting consumers from unfair practices by establishing criteria for the dissemination of credit and court record information contained in a consumer's tenant screening report.

Brief Description: Establishing criteria for the dissemination of credit and court record information contained in a consumer's tenant screening report.

Sponsors: Senators Kohl-Welles, McDermott, Kline and Fairley.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/25/09.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Diane Smith (786-7410)

Background: Residential landlords frequently use a type of credit report, more commonly known as a tenant screening report, in evaluating and selecting tenants for their rental properties. These reports can contain information from public sources, such as court records and criminal background checks, and from proprietary sources, such as a credit score and credit report.

The Residential Landlord-Tenant Act addresses tenant screening. If the landlord uses a service to obtain the report, only the landlord's cost can be charged to the tenant. If the landlord obtains the background information, actual costs may be charged to the tenant. However, these costs may not be assessed against the tenant unless the landlord first notifies the tenant of what a tenant screening entails and of the tenant's right to dispute the information received about the tenant.

Other than complying with federal law, the landlord is not required to disclose information to the tenant that was obtained from the screening process. The landlord's violation of the tenant screening law can result in a law suit, the result of which can be the landlord's liability to the tenant for \$100 and the prevailing party's recovery of court costs and reasonable attorneys' fees.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Washington Fair Credit Reporting Act (Act) addresses consumer reporting agencies and the reports they produce that are used for decisions regarding the rental or leasing of dwellings. A credit reporting agency must furnish its reports to the consumer without charge if the consumer requests the report within 60 days of receipt of an adverse action based on the consumer report. Verbal notice of an adverse action is allowed in the context of rental or leasing of residential real estate if the verbal notice does not impair the tenant's ability to obtain the consumer report without charge.

Certain information is prohibited from appearing in a consumer credit report, including in most cases, information about actions taken against the consumer over seven years ago. These adverse actions include suits and judgments; paid tax liens; accounts placed for collection; and records of arrest, indictment, and criminal conviction. Disclosures of bankruptcies over ten years ago are prohibited. Exceptions that allow the disclosure of this information also exist.

The civil law provides for special rights of action and special immunities.

Criminal and civil law provide statutory mechanisms whereby a victim of violent crime may protect his or her identity and location of residence. Provisions also exist for the victim of violent crime to obtain an order of protection from a court. Other provisions grant persons certain claims and defenses by virtue of their status as victims of violent crime.

Summary of Bill: Various terms specific to tenant screening and the Act, originally enacted in 1993, are defined.

Duties are assigned in the process of tenant screening. These duties are specific to the requestor of the tenant screening report and to the screening service. They create a 60-day period, after the screening service issues the tenant screening report, during which the service must accept no additional compensation to provide the report about that tenant to any other landlord but the first to request the report. Failure of a service or landlord to refund a fee collected contrary to these provisions creates a rebuttable presumption that the failure was a willful violation.

The landlord may not charge the tenant for any tenant screening costs if the tenant provides the landlord with a comprehensive screening report within 60 days of the report date. The landlord must notify the tenant in writing, if the landlord uses a screening service, of the tenant's right to avoid tenant screening fees by providing a comprehensive screening report. The landlord's violation of these requirements makes the landlord liable to the tenant for the tenant's actual damages, costs, and attorneys' fees as determined by a court. If the violation is willful, the tenant must be awarded \$1,000 in monetary penalty against the landlord for each willful violation.

Verbal notice of an adverse action regarding an application for the rental or leasing of residential real estate is not allowed. The written notice must state the reasons for the adverse action.

The landlord is not prohibited from obtaining background information about the tenant at the landlord's expense.

Certain information is prohibited from appearing in a tenant screening report. A screening service that willfully fails to comply with these requirements is liable to the tenant in the amount of \$1,000 for each willful violation. The prohibited information includes narrowing of the information regarding suits and judgments in the context of evictions and qualified victim protection records.

A plaintiff may be required to appear and show cause why an order should not issue sealing or redacting certain court records upon a showing of a compelling privacy or safety concern that outweighs the public interest in access to the court records. This requirement to appear and show cause is available to defendants in any action for the possession of real property under any of the landlord and tenant provisions of law and to any defendant in any action for ejectment under a different chapter of law. A compelling privacy or safety concern is established by the the court records being those that are likely to diminish the ability to obtain access to rental housing. This compelling privacy or safety concern alone outweighs the public interest in certain circumstances.

Anyone who violates the order to seal the court records by making disclosures of or about the contents of the records is liable to the person for whose benefit the records were sealed for that person's actual damages, costs, attorneys' fees, and, if the violation is willful, for a monetary penalty of \$1,000 for each willful violation.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.